



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF EDUCATION
JUDY A. JEFFREY, DIRECTOR

Memorandum

TO: AEA Chief Administrators
AEA Special Education Directors
AEA Ed Services Directors
AEA Media Directors
LEA Superintendents

FROM: Judy Jeffrey, Director

RE: Early Intervening Services – Guidance on the Use of 15% of the Part B Funds

Under the 2004 IDEA amendments and the 2006 IDEA regulations, AEAs and LEAs are permitted to use “not more than 15 %” of their allocations under Section 611 of Part B to “develop and implement coordinated, early intervening services, which may include interagency funding structures, for students in kindergarten through grade twelve (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.” 34 C.F.R. § 300.226. These provisions of the law are based on the belief that improved interventions in general education may reduce the need for special education identification and services. This memo provides initial guidance on Early Intervening Services (EIS).

Q: What should an EIS system “look like”?

A: It depends on the needs of each LEA or AEA. While LEAs and AEAs are given wide latitude in delivering EIS, it is important that EIS be coordinated within each agency and with potential interagency funding structures. Given that latitude, however, each AEA and LEA should carefully plan how EIS funds will be spent. Each AEA and each LEA in an AEA are strongly encouraged to coordinate their EIS plans.

Q: Must an AEA or LEA use all of the allotted 15 % for EIS?

A: With one exception, the use of “not more than 15 %” of Part B funds for EIS is discretionary. AEAs and LEAs may use up to this amount, but may not use more than this amount. If an LEA has a significantly disproportionate rate of identification, placement, or disciplinary action based on race or ethnicity (as determined by an analysis of applicable data and subsequent notification of the LEA by the Department), however, then that LEA must use the maximum amount permissible on EIS.

Q: What activities may an AEA or LEA provide with EIS funds?

A: According to the 2004 IDEA amendments and the 2006 IDEA regulations, the following activities are possible EIS activities:

- “Professional development (which may be provided by entities other than the LEA) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software.”
- “Providing educational and behavioral evaluations, services and supports, including scientifically based literacy instruction.”
- According to OSEP, other activities not listed may be permissible, so long as those activities are directed to providing assistance to students who need additional academic and behavioral support in the general education environment.

Grimes State Office Building - Des Moines, Iowa 50319-0146

PHONE (515) 281-5294 FAX (515) 242-5988

www.state.ia.us/educate

Helping Communities Meet the Learning Needs of All Their Children and Adults

Q: Are supplemental instructional materials included in “educational and behavioral evaluations, services, and supports”?

A: Yes. In the commentary to the 2006 IDEA regulations, OSEP states that purchasing supplemental instructional materials is appropriate.

Q: May AEAs or LEAs use related services personnel in the delivery of EIS?

A: Yes. Related services personnel may be included in the provision of EIS.

Q: Are there specific examples of activities that EIS funds may support?

A: Whether they take the form of direct services or professional development, EIS must be directed to those children “who need additional academic and behavioral support to succeed in a general education environment.” Activities typically covered under Title I and not related to special education may be supported by EIS funds, as well as trainings and professional development on Instructional Decision Making (IDM) and for building assistance teams. School-wide and classroom-wide activities, such as positive behavior support activities and Character Counts, may be supported by EIS funds. Academic or behavioral interventions with a child without an IEP may be supported by EIS funds. AEAs and LEAs may use EIS funds to employ consultants who provide services to general education students who need additional “academic and behavioral support.”

Q: Are there examples of activities that may not be supported with EIS funds?

A: Activities directed to students with IEPs may not be supported with EIS funds. Progress monitoring associated with the implementation and ongoing delivery of services described in a student’s IEP may not be supported with EIS funds, nor may any professional development (whether directed to general education teachers or special education teachers) about teaching students with disabilities and implementing IEPs.

Q: What is the relationship between EIS and Response to Intervention (RTI)?

A: The relationship between EIS and RTI is close and complex. Services provided as part of RTI that occur prior to parental consent to evaluate may be counted toward the 15 % that may be spent on EIS. RTI may also be provided by AEAs with “special education support services” funds, regardless of when consent to evaluate has been given. RTI services that are provided after parental consent to evaluation are not EIS, but are part of Part B’s child-find and evaluation component.

Q: What is the “bottom line” for activities that EIS funds may support?

A: There must be a close and demonstrable connection between EIS funds and students in general education needing additional academic and behavioral supports. If the connection between the funded activity and children needing EIS support is remote or tenuous (e.g., paying support staff salaries), such use of funds will be subject to very close scrutiny.

Q: Is parental consent required before a student receives EIS?

A: No. Remember, however, that each school is required to annually inform parents about general education interventions that may occur during the school year. Iowa Admin. Code r. 281-41.48(2)(a).

Q: At what point must EIS stop and consent to an evaluation be sought?

A: It depends on the needs of each child. OSEP makes clear there is no bright line for when EIS must stop and an evaluation must be started; however, a child’s receipt of EIS may not delay an “appropriate evaluation of a child suspected of having a disability.”

Q: May EIS be provided to children who once received special education but who have been exited from special education?

A: Yes, if those children might need “additional academic and behavioral support to succeed in a general education environment.”

Q: What are the reporting requirements for LEAs?

A: Each LEA must annually report to the Department (1) on the number of students who receive EIS supported by Part B funding and (2) the number of students who received EIS “and subsequently receive special education and related services ... during the preceding two year period” (i.e., the two years after the child received EIS). This reporting will be through Project EASIER and was discussed at the Project EASIER Fall 2006 workshops. The EIS data element is included in the Fall Data Reporting Requirements with the expectation that more complete and comprehensive data will be collected in the Spring Data Collection. If an AEA provides EIS, then the AEA should report to each LEA the names of the children who received direct services or the LEA employees who received professional development from the AEA.

Q: When EIS involves professional development, how do LEAs calculate the number of children who benefited from that professional development activity?

A: If a teacher or other employee receives professional development supported by EIS, then all of the students not in special education served by that teacher or other employee are to be counted as receiving EIS.

Q: What is the purpose of these reporting requirements?

A: The reporting requirements are designed to determine whether EIS actually reduces the frequency of special education referrals and determinations of eligibility.

Q: Must AEAs or LEAs track students who benefit from Department-supported assistance or initiatives (e.g., workshops, technical assistance) for general education students who need additional academic or behavioral support?

A: An AEA or an LEA would be required to track such students only if the AEA or LEA used EIS funds to participate in the Department-supported program (e.g., an LEA uses EIS funds to hire a substitute for a teacher attending a Department workshop).

Q: What is the relationship to EIS and funds received under the Elementary and Secondary Education Act (ESEA)?

A: EIS funds may be coordinated with ESEA funds and must supplement, not supplant, those ESEA funds. ESEA funds include but are not limited to funds under Title I (including but not limited to Reading First, Even Start Family Literacy programs, education of migratory children, and programs for children who are neglected, delinquent, or at-risk), Title II (teacher and principal preparation programs), Title III (programs for students with limited English proficiency), and Title IV (Safe and Drug-Free Schools and Communities).

Q: May schools use EIS funds to provide services to at-risk limited English proficiency students?

A: It is inappropriate to use EIS funds to fund programs for English language learners who do not need additional academic and behavioral supports to succeed in the general education environment; however, OSEP states nothing in the 2004 amendments or the 2006 regulations would prohibit an LEA or AEA from using EIS funds to provide EIS to English language learners who are also at risk and “need additional academic and behavioral support to succeed in a general education environment.” Remember that EIS and ESEA funds for English language learners are subject to the supplement-not-supplant requirement.

Q: Are children in pre-school or pre-kindergarten programs eligible for EIS?

A: No. Students who are in pre-kindergarten programs (as well as students beyond grade twelve) are not eligible for EIS. Early Intervening Services are not to be confused with Early Intervention (Early ACCESS) under IDEA’s Part C.

Q: How do LEAs and AEAs properly document the receipt and expensing of the funds designated for Early Intervening Services?

A: The Department is currently developing the process of recording EIS funds. To properly document the receipt and expensing of funds, the chart of accounts used by school districts will be changed to allow for segregated recording of transactions affecting EIS funds. LEAs and AEAs should be prepared to document allowable transactions based upon the guidance provided by the Department. In addition, a process will be established to allow for State reporting of the amount expensed and the types of services provided. Lastly, the Department will train persons responsible for LEA and AEA finances on EIS auditing guidelines.

Q: Does delivery of EIS create a right to FAPE?

A: No.

Q: Who may I call with questions about EIS?

A: Contact either Steve Crew, the Department's consultant for special education finance (Steve.Crew@iowa.gov or 515-282-6285), or Thomas Mayes, the Department's special education legal consultant (Thomas.Mayes@iowa.gov or 515-242-5614).

What special education funds may AEAs use to provide students in general education with "additional academic and behavioral support to succeed in a general education environment"?

	State & Local Funds	Part B Funds
Response to Intervention (Prior to Parental Consent for Evaluation)	Yes. <i>See</i> Iowa Code § 256B.3(5) No data reporting requirement and not counted toward 15 % limit on Part B funds.	Yes, accompanied by the data reporting requirement and the 15 % limit.
Professional Development	No. <i>See</i> Iowa Code § 256B.3(13). State and local special education funds may only be spent for professional development for special education teachers or general education teachers to provide improved instruction to eligible individuals.	Yes, accompanied by the data reporting requirement and the 15 % limit. The purpose is to reduce the number of children in special education.

LM/JJ

Cc: Pam Pfitzenmaier
Lana Michelson
Del Hoover
Jim Reese